

The 30th October, 1986

No. 9/9/86-6Lab./7704.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s The Panipat Cooperative (Sugar Mills, Distillery Unit, Panipat :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 624/1983

between

SUMER SINGH, WORKMAN C/O TEXTILE MAZDOOR SANGH, G.T. ROAD, PANIPAT AND THE
MANAGEMENT OF M/S THE PANIPAT COOPERATIVE SUGAR MILLS, DISTILLERY UNIT, PANIPAT

Present.—

Shri Karam Singh, for the workman.
Shri R. S. Malik, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute between Shri Sumer Singh, workman and the management of M/s Panipat Cooperative Sugar Mills, Distillery Unit, Panipat to this Tribunal for adjudication:—

Whether the termination of service of Shri Sumer Singh was justified and in order? If not, to what relief is he entitled?

2. After receipt of reference, notices were issued to both the parties. Parties appeared. The claim of the petitioner is that he was working in the respondent Mills since 1976 and that his services were abruptly terminated without assigning any reasons or paying any compensation. He prayed for reinstatement with full back wages.

3. The respondent in the reply filed by them took the preliminary plea that the reference is not maintainable in view of sections 102 and 128 of Haryana Cooperative Societies Act. On merit it was pleaded that Shri Sumer Singh was not a regular workman. He was a casual worker and used to work off and on as per exigencies of work available in the distillery Unit.

4. The pleas taken in the written statement were controverted in the rejoinder filed by the workman.

5. On the pleadings of the parties, the following issues were settled by Shri R.N. Batra, my predecessor on 15th January, 1986.

(1) Whether the reference is not maintainable in view of the provisions of sections 102 and 128 of the Haryana Cooperative Societies Act, 1984?

(2) Whether the claimant was casual worker? OPM

(3) Whether the termination of service of Shri Sumer Singh was justified and in order? If not, to what relief is he entitled? OPM

6. The management examined Chander Parkash, Time Keeper as MW-1 and produced on record the appointment letters Ex. M-1 to M-12 and the workman has appeared as his own witness and produced documents Ex. W-1 to W-4. I have heard the authorised representatives of the parties and perused the record. My findings on the above issues are as under:—

Issue No. 1 :

7. Objections raised by the management that reference was not maintainable and the Industrial Tribunal has no jurisdiction were found without any permit by my predecessor Shri R.N. Batra,—vide his order dated 6th August, 1985. The plea covered by this issue has already been answered against the management by my predecessor.

Issue No. 2 :

8. Ex. M-1 to M-12 appointment letters clearly indicate that Shri Sumer Singh was a casual worker. He was appointed on purely temporary basis on daily wages for a specific period. The appointment letters are

thumb marked/signed by Shri Sumer Singh, workman. Shri Chander Parkash has also deposed that the claimant was a casual worker. No evidence has been led by the workman to rebut the evidence of the management. Thus it is amply established that Shri Sumer Singh was a casual worker.

Issue No. 3.

9. Shri Chander Parkash MW-1 deposed that the petitioner was employed as a casual worker in the respondent factory on daily wages. He worked for 40½ days in 1975-76, 10 days in 1976-77, 96 days in 1977-78, 15 days in 1978-79, 93½ days in 1979-80, 173 days in 1980-81, 213½ days in 1981-82, 100½ days in 1982-83. In cross-examination he admitted that weekly rest and national holidays had not been included in the actual number of working days for which the worker has worked.

10. On the contrary Shri Sumer Singh WW-1 deposed that he was appointed in the year 1976 on wages of Rs. 340 per month and his services were terminated on 6th January, 1983. He also stated that the provident fund was deducted from his salary and produced the photo stat copies of the receipt Ex. W-1 to W-4. He added that no enquiry was conducted before terminating his services and he was also not paid any compensation.

11. If immediately preceding the date of termination of services of such workman actually worked for not less than 240 days within a period of 12 months under the employer he will be deemed to be in continuous service for one year under section 25-B (2) (a) (ii) of the Industrial Disputes Act, 1947, and would be entitled to retrenchment compensation under section 25-F of the Industrial Disputes Act. Termination of service of such a workman without complying with the provision of section 25-F of the Industrial Disputes Act, would render the order of termination void *ab initio* entitling him to declaration for continuation in service with full back wages. See *Mohan Lal Appellant V. The Management of M/s Bharat Electronics Ltd.*, 1981 Lab. I.C. page 806 (Supreme Court).

12. In another case between *Workmen of American Express International Banking Corporation V/s American Express International Banking Corporation*, 1985-II-LLJ page 539, their Lordships of Supreme Court have held that Sundays and other paid holidays should be taken into account for reckoning the number of days on which the workman is stated to have actually worked for the purpose of calculating 240 days.

13. During the course of argument the learned Authorised Representatives of the parties were asked to prepare and submit a chart to facilitate the Tribunal to find out the number of days for which the said workman has actually worked in a preceding year. Accordingly the chart was prepared and submitted before this Tribunal which has been placed on the record. The authenticity of the chart was not disputed before the Tribunal. It is clear from it that the workman has worked for 179½ days. Besides this there were 32 Sundays and other weekly rest days, totaling it as 211½ number of working days when computed in term of ratio of case of workman *American Express International Banking Corporation V/s American Express International Banking Corporation* (Supra). Thus it is apparent in the present case commencing from the date of termination of service and counting backward the petitioner has rendered service for less than 240 days within a period of 12 months. Thus if so he was not entitled to protection of provisions of section 25-F of the Act. Hence the claimant was not entitled to any retrenchment compensation, or notice pay as he has rendered service for less than 240 days in the preceding year. His service could be terminated by the employer when there was no work in term of appointment letter Ex. M-12. There is clear stipulation in the appointment letter that the employment was for a specified period and the same stood terminated automatically on the expiry of that period. Besides this there is also clause in the appointment letter that management had right to dispense with the services even earlier without any notice. The workman was a daily unskilled worker working in the Distillery Unit on temporary basis. No fault can be found with his termination of services because he has rendered service of less than 240 days in the preceding year. Accordingly I hold that termination of service of the petitioner was in consonance with the term of appointment letter and was justified and in order and that Shri Sumer Singh is not entitled to any relief. The reference is answered accordingly. There shall be no order as to cost.

Dated 29th August, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 591, dated 29th August, 1986.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.